

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

WIRT K. WINTON, ADMINISTRATOR OF THE estate of Charles F. Winton, deceased, and others, appellants, v. JACK AMOS AND OTHERS, KNOWN AS THE Mississippi Choctaws, appellees.	}	No. 123.
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BRIEF OF APPELLEES IN OPPOSITION TO APPELLANTS' MOTION TO REMAND FOR ADDITIONAL FINDINGS OF FACT.

STATEMENT.

Appellants move to remand the record to the Court of Claims for additional findings of fact, to wit:

1. Findings of fact on certain questions of fact contained in a motion filed by the appellants on January 8, 1917, in the Court of Claims, and answered by the said court in an opinion rendered January 29, 1917 (Rec. 201-232), and a finding of fact as to whether the appellants' motion filed in the Court of Claims on August 9, 1915, to amend the court's findings of fact of May 17, 1915, contained requested amendments to findings Nos. IX to XXXIII, inclusive, and XLIII, the same as set out in said questions of fact Nos. IX to XXXIII (Rec. 213-231).

2. A finding of fact as to whether or not the appellants on February 6, 1917, moved the Court of Claims to include in the transcript of the record to be certified here, the finding of fact of the said court made on May 17, 1915, and the appellants' motion made on August 9, 1915, to amend the same, and if so, what action thereon was taken by said court.

3. Findings of fact on question of fact as to whether or not Winton and his associates prepared and presented to Congress the memorials in behalf of the Mississippi Choctaws, which were presented to and made a part of the record of the case in the Court of Claims, at or before the trial of said case and which are set out in the appendix to this motion:

(a) Memorial of September 1, 1897, signed by C. F. Winton, counsel (pp. 131-152).

(b) Petition of February 7, 1900, presented to Congress February 13, 1900 (pp. 178-182).

(c) Memorial presented to Congress April 24, 1902, (pp. 206-212).

(d) Memorial presented to Congress March 15, 1904, (pp. 213-218).

Appellees submit that the motion should be denied for the following reasons:

1. That every fact material to the final disposition of this case has been heretofore found by the Court of Claims and their action thereon is fully disclosed by the record (Court's findings Nos. I-XXXII, inclusive, and XLIII).

2. That the appellants, heretofore, to wit, on March 20, 1917, filed a motion for certiorari requiring the Court of Claims to certify as part of the record here, the findings of fact of said court filed May 17, 1915, and the appellants' proposed amendments to said findings of fact filed August 9, 1915, which motion was denied by this court on April 16, 1917. (See briefs of appellants and appellees on the motion.)

ARGUMENT.

The reasons for moving the court to remand the record, as stated in appellants' brief, do not appear to be sound. They say:

The appellants desire that the claimants' motion, made August 9, 1915, to amend the findings of fact made May 17, 1915, be made a part of the record in this court in order to establish the fact that the questions of fact presented by claimants' "request for findings of fact on certain questions of fact" covered the same questions of fact set out by claimants' said motion to amend and to show that the Court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as it did in the opinion of January 29, 1917, R. 206 (p. 5).

The above statement in almost identical language was made in appellants' brief on motion for certiorari, which reads:

The appellants desire that the findings of fact made December 7, 1914, and the findings

of fact made May 17, 1915, and claimants' motion to amend the findings of fact made May 17, 1915, be made a part of the transcript in order to show to your honorable court that the questions of fact presented by claimants "request for findings of fact on certain questions of fact" covered the same questions of fact covered by claimants' said motion to amend the findings of fact and that the court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as said by the court below at the top of page 6 of the opinion filed therein January 29, 1917 (p. 5).

The court on the motion for certiorari would have remanded the record for additional findings of fact if the reasons presented had been sufficiently strong. There is, therefore, no reason for remanding the record now on the same ground.

The impelling cause for the filing of this motion appears to be a statement made by the Court of Claims in answering the questions of fact propounded by appellants on January 8, 1917, that the requests made in the so-called "questions of fact" had not been heretofore "requested in either narrative or alternative form" (Rec. 206). The Court of Claims had previously referred to appellants' motion of August 9, 1915, and evidently reached the conclusion that the questions of fact were not deducible therefrom. The Government

maintains that the lower court was right in its conclusion.

The Court of Claims, however, carefully examined and answered the so-called questions of fact and in overruling the motion said:

We are unable to conclude, as appears by the foregoing opinion, that the claimants, by the aforesaid motion, have brought to our attention any error of a substantive character which in anywise disturbs the court's conclusions as to the correctness of the findings heretofore announced (Rec. 232).

A careful examination of the appellants' motion of August 9, 1915, to amend the findings of fact of the Court of Claims of May 17, 1915 (appendix to motion, 1-131), and the memorials appended thereto (pp. 131-208), and a comparison with the court's findings of fact numbered I to XXXII, inclusive, and XLIII, will show that all of the material facts therein have been found by the Court of Claims, and this without an examination of the thousands of pages of oral testimony taken under the rules of that court bearing upon alleged facts set out in the appellants' motion of August 9, 1915. All of this testimony was considered by the lower court in making its findings.

The specific findings of fact relating to the memorials set out in appellees' motion (pp. 2,3), are described in the court's findings of fact Nos. I, XII, XXII, and XXIX, except the memorial of March 15, 1904, set out in the appendix to this motion (pp. 213-218), which was an attempt to deprive the Mississippi Choctaws

of the safeguard contained in the proviso to the act of May 31, 1900, invalidating contracts. (See court's finding XXII.) This memorial was presented long after the passage of the act of July 1, 1902, under which the Mississippi Choctaws were enrolled and received their allotments.

If any facts material to the decision of the case have been requested to be found and have not been acted upon by the Court of Claims, this court will remand the record with directions to the lower court to determine whether or not such facts are sustained by the evidence. (*United States v. Adams*, 9 Wall. 661; *United States v. Driscoll*, 131 U. S. Appendix CLIX; *Ripley v. United States*, 220 U. S. 491; *Id.* 222 U. S. 144.) Appellants have failed to point out such facts. The lower court has passed upon all the facts presented bearing upon the alleged services rendered by the appellants, a function peculiarly within the province of that court. This court has frequently said that under such circumstances it will not go behind the findings of said court. (*McClure v. The United States*, 116 U. S. 145; *District of Columbia v. Barnes*, 197 U. S. 146, 150; *Sisseton and Wahpeton Indians*, 208 U. S. 561, 566.)

It is respectfully submitted, for the foregoing reasons, that the motion should be denied.

ALEX. C. KING,

Solicitor General.

HUSTON THOMPSON,

Assistant Attorney General.

